

State of California

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# **REPORT TO THE LEGISLATURE ON THE STATUS OF THE STATE'S DISCRIMINATION COMPLAINT PROCESS**

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Prepared by:

## **State Personnel Board**

Ronald L. Alvarado - President

William Elkins – Vice President

Florence S. Bos– Member

Sean Harrigan – Member

Walter Vaughn – Executive Officer



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## CONTENTS

<u>Topic</u>	<u>Page</u>
Purpose of Report.....	1
Summary of Major Findings.....	2
Major Recommendations .....	4
Additional Resources Needed to Implement Other Important Recommendations .....	5
Consequences of Not Implementing Recommended Improvements .....	6
Current Legal and Procedural Requirements.....	7
• Non-Discrimination Laws	
• The State Discrimination Complaint Process	
• The State Personnel Board's Appeals Process	

## **REPORT TO THE LEGISLATURE ON THE STATUS OF THE STATE'S DISCRIMINATION COMPLAINT PROCESS**

### **PURPOSE OF THE REPORT**

This report has been prepared pursuant to Government Code Section 19702.5(c), which requires the State Personnel Board (SPB) to hold a public hearing once every three years to assess the effectiveness, accessibility, and fairness of the state's discrimination complaint process, and to report the findings and recommendations for improvement to the Legislature within 90 days of the hearing.

To comply with the statutory requirements, the SPB completed an extensive evaluation of the state's discrimination complaint process in February 2002. This evaluation included conducting a survey of 89 state departments using a detailed questionnaire to measure the effectiveness of current discrimination complaint processes. In addition, SPB staff also surveyed a one-percent sample of state employees regarding their knowledge of, and experience with, their departmental discrimination complaint process. To supplement survey information, staff completed on-site reviews in 16 of the 89 state departments. This included interviewing equal employment opportunity (EEO) officers, investigators, and counselors and reviewing a random sample of investigative files and reports.

After analyzing all information gathered, staff prepared its report with major findings and 58 recommendations for improving the state's discrimination complaint process. The report was presented to the five-member State Personnel Board (Board) at a public hearing on March 5, 2002. At the hearing, representatives from the California State Employees Association, California Civil Rights Officers Council, and current and past state employees presented written and oral testimony regarding their concerns about the state's discrimination complaint process. The Board took all information under consideration and has prepared this report to the Legislature with its final findings and recommendations.

**SUMMARY OF MAJOR FINDINGS**

The state's discrimination complaint process is sound in principle, but its implementation by some departments is inconsistent and incomplete. Improvements are needed at the departmental level to better assure effectiveness, accessibility, and fairness. In addition, the SPB needs to provide departmental staff with guidelines and training to improve their ability to effectively carry out the process.

The SPB report confirmed many of the findings in an earlier study by a 1999 Joint Labor/Management Committee on Discrimination (JLMCD). The committee issued a report to the SPB in December 2000 that concluded that more could be done to prevent employment discrimination. Many of the recommendations contained in the committee's report overlap with the SPB staff recommendations.

The following are the specific findings:

- The state and state departments are not effectively communicating their non-discrimination policy or discrimination complaint procedures to departmental employees. The last Governor's Executive Order on equal employment opportunity and non-discrimination was issued in 1996. Of the departments surveyed, 57.3% indicated that their current director had issued a non-discrimination policy statement and 60.7% of the departments had issued written discrimination complaint procedures to their employees.
- State departments are not effectively monitoring discrimination complaint investigation and litigation costs. Many departments were unable to provide cost information or determine the amount of staff resources associated with handling discrimination complaints. Thirty-eight of the 89 departments surveyed (42.7%) estimated their litigation costs totaled \$26.9 million. Sixty-eight departments (76.4%) estimated their cost of processing, counseling and investigating complaints as \$9.8 million. The SPB costs to process and adjudicate discrimination complaints appealed to the SPB were \$200,000. A partial estimate of costs expended by departments during 1999-2000 totaled \$36.9 million.
- In calendar year 2000<sup>1</sup>, state departments reported over 1,200 individual discrimination complaints were filed. State departments reported receiving 676 discrimination complaints filed by individuals in which 1,103 multiple charges of discrimination were made. In addition, departments reported that employees filed 328 complaints with the Department of Fair Employment and Housing (DFEH), and 210 with the U.S. Equal Employment Opportunity Commission (EEOC).
- The greatest number of departmental discrimination complaints were received for retaliation, 214 (19.4%); sexual harassment, 188 (17.0%); and race, 182 (16.5%).

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<sup>1</sup> Calendar year 2000 is the last year for which there is complete information on discrimination complaints.

- In calendar year 2000, state departments reported closing 592 individual discrimination complaints. Of those, departments made a specific finding in 355 (60%) and found discrimination had occurred in 54 (15.2%) cases.
- In calendar year 2000, the SPB closed 136 discrimination complaint appeals. Of these, 42 (30%) were withdrawn by the appellant; 39 (28.7%) were not accepted due to no grounds established, no jurisdiction, or not filed timely. The SPB decided 55 (40.4%) cases. Of the 55 cases decided, 27 (49.1%) were denied/dismissed, 23 (41.8%) were settled by stipulation of parties, and 5 (9.1%) of these appeals were granted.
- Forty-eight (53.9%) departments reported that they had an active informal discrimination complaint process, which attempts to resolve complaints at the lowest level, with the least formality. Departments reported 924 informal complaints were filed. Of these, 635 (68.7%) were resolved through the informal process.
- Forty-three (48.3%) departments offer SPB mediation to employees as a method for resolving complaints. Departments reported that 121 employees accepted mediation and 70 (57.9%) complaints were resolved through the process.
- Reporting relationships and classification levels of departmental EEO officers varied among state departments. Fifty-nine (66.3%) departments report that their EEO officers report to the directorate. The classification level of EEO officer positions range from staff services analyst to high-level exempt positions.
- The quality of departmental discrimination complaint investigations varied and nearly half of the files reviewed were found to have problems. While 51% of departmental investigations reviewed by staff appeared to be impartial, thorough and the findings sound, 29% contained minor problems, and 20% had serious problems.
- Departmental discrimination complaint files reviewed were not complete. More than half (63%) were missing items.
- Departmental discrimination complaint data reported to the SPB was incomplete or contained errors as a result of inadequate departmental tracking systems, insufficient resources/staff, departmental staff turnover, insufficient training, and lack of attention.
- Training of key departmental staff in employment and civil rights law and in procedural requirements, is not uniform, consistent, or being provided on a timely basis by departments. Sixty-eight (76%) departments report that they have provided some employment law training to supervisors and managers within the last three years. Departments indicate that 85.3% had provided sexual harassment training to all their managers and supervisors within the last three years, 47.7% had provided reasonable accommodation training. A majority of the departments (74.2%) indicate that all their EEO investigators had completed the SPB's EEO investigator training course or similar training. Fifty-eight (65.2%) departments indicate that all their EEO

counselors had completed the SPB's EEO counselor training course or similar training.

## **MAJOR RECOMMENDATIONS**

Following the SPB's March 5, 2002, public hearing, the Board took all information in the staff's report and written and oral testimony under consideration and identified four major objectives:

- (1) Strengthen the state's commitment to non-discrimination and equal employment opportunity through awareness and education among supervisors, managers, and employees;
- (2) Improve the effectiveness of discrimination complaint processes and practices to ensure that complaints are dealt with fairly and in a timely manner;
- (3) Provide department staff with training to deal more effectively with discrimination issues; and
- (4) Improve departmental monitoring of discrimination complaint activity, including resources and costs, to better measure the effectiveness of efforts to comply with the non-discrimination policy.

The SPB has fully considered all of the recommendations and testimony presented at the public hearing and concludes that it does not have sufficient staff resources to implement all of the recommendations within the next fiscal year. Among the recommendations identified, the following actions were deemed to have the greatest potential for achievement of the above objectives and can be implemented with current staff resources within the next fiscal year:

- The SPB request that the Governor issue a new executive order strongly reiterating the state's commitment to a policy of non-discrimination and equal employment opportunity and emphasizing the importance of complying with the policy.
- The SPB send a memorandum to department directors asking them to issue new non-discrimination policy statements to all their employees and to demonstrate their commitment by ensuring that their departmental discrimination processes conform with SPB requirements and procedures recommended in the staff report. The SPB will develop a model written discrimination complaint procedure identifying essential elements that should be included in an effective procedure.
- The SPB revise its EEO counselor training to provide greater emphasis on practical counseling and interviewing techniques. By promulgating a new regulation, the SPB will make training mandatory for all EEO counselors before they can assume counseling duties and will require refresher training every three years.
- The SPB revise its technical EEO investigator training to provide more emphasis on the practical aspects of conducting investigations, including steps in the investigative process, interviewing techniques, and report writing. Training will be mandated by new SPB regulation for all EEO investigators before they can assume investigative

duties and refresher training will be required every three years. Note: The SPB will identify alternative investigative services for departments without trained investigators; e.g., interagency agreements, mediation, private contractors, etc.

- The SPB promulgate new and revised regulations to improve procedural, training, and monitoring requirements.
- Expand and improve SPB's collection of discrimination complaint information to include the costs associated with discrimination complaint activity and the number of informal, formal, DFEH, and EEOC complaints in order to provide more complete and accurate information to the Legislature. To accomplish this, the SPB will develop an automated, interactive, Internet-based discrimination complaint tracking system so departments can directly input information on a quarterly basis to the SPB.
- The SPB conduct on-site reviews of the discrimination complaint process in a limited number of departments each year and provide feedback on what improvements are needed. With current resources, SPB would be able to review approximately 12 departments each year.
- The SPB develop a statutory requirement that departments track the costs associated with their discrimination complaint activity and report the information to the SPB annually. The SPB has included language in SB 1161 (Polanco) in an effort to accomplish this.

#### **ADDITIONAL RESOURCES NEEDED TO IMPLEMENT OTHER IMPORTANT RECOMMENDATION**

Although the SPB anticipates that it can implement its highest priority recommendations above within current resources during the 2002-03 fiscal year, there are many other important recommendations for improving the state's discrimination complaint process contained in the SPB and JLMCD reports that need to be implemented or studied further (See Attachment 1 and 2 respectively). The SPB does not have sufficient resources to complete this work, and will pursue additional funding to establish new positions. Legislative support for this budget augmentation will be critical for gaining its approval.

Without additional staff resources, important, potentially cost savings work must be deferred. Chief among the additional recommendations is a need to develop comprehensive non-discrimination training for all 28,000 state managers and supervisors. Options for how to best provide this training to state managers and supervisors need to be explored. The result of providing better training to recognize and deal with employment discrimination issues would very likely be fewer employee discrimination complaints and less litigation. SPB believes that this workload reduction would save the state substantial dollars, in just a few years, and offset the cost of implementing this training and the other recommendations.



### **CONSEQUENCES OF NOT IMPLEMENTING RECOMMENDED IMPROVEMENTS**

Employment discrimination is prohibited by federal and state law. The state is obligated to monitor its employment practices to identify illegal, non-job-related practices and to take timely and effective remedial action. To the extent that the state does not effectively deal with employment discrimination issues, it will continue to be vulnerable to costly discrimination complaints and litigation amounting to millions of dollars. It is imperative that the state recognize the importance of obtaining more complete and accurate information on what employment discrimination is costing the state. It is also imperative that the state recognizes the importance of taking effective action to reduce complaints and litigation, not only to fully meet legal obligations, but to save taxpayers unnecessary costs. The SPB believes that its recommendations will go a long way to accomplish this.

## **CURRENT LEGAL AND PROCEDURAL REQUIREMENTS**

### **NON-DISCRIMINATION LAWS**

California Government Code Sections 19700-19705 prohibit discrimination against State employees and applicants based on sex, race, religious creed, color, national origin, ancestry, marital status, political affiliation, and disability. These sections also prohibit retaliation and harassment against State employees and applicants for filing a discrimination complaint with the department or directly with the SPB. Governor's Executive Order B-54-79 and Government Code Section 12940(I) prohibit discrimination on the basis of sexual orientation and sexual harassment respectively. Additional civil rights protection is provided through the following federal laws: Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Pregnancy Discrimination Act of 1978, and the Americans with Disabilities Act of 1990.

### **THE STATE DISCRIMINATION COMPLAINT PROCESS**

Employees and applicants are required to file most formal discrimination complaints with the department involved. There are some exceptions. Complaints may be filed directly with the SPB if they involve: 1) retaliation for opposing discrimination; or 2) retaliation for participating in the discrimination complaint process by filing a complaint, or participating as a witness or other involved party; or 3) the complainant is the departmental executive director or other executive officers.

The department's EEO officer has the overall responsibility for managing the discrimination complaint process. This process may involve an informal component and a formal component. Prior to filing a formal discrimination complaint, individuals can seek informal resolution of their complaint through the use of an EEO counselor. The informal process is conducted by trained EEO counselors that attempt to resolve complaints as quickly as possible, at the lowest organizational level, involving the fewest people. An effective informal discrimination complaint process results in fewer formal discrimination complaints.

If a complaint cannot be resolved through the informal process or the complainant chooses to bypass the process, the complainant then has the right to file a formal written discrimination complaint. After receiving the formal complaint, the EEO officer may assign the complaint to a trained EEO investigator for formal investigation and he/she will provide supervision and assistance through the process. The EEO officer provides the complainant with a summary of investigative findings, and, with director/executive officer approval, may also provide the department's final complaint decision. The department must render a timely final decision on the complaint in accordance with internal time lines that the department has established. Complainants are advised of their rights in the process as well as their appeal rights to the SPB. Complainants may appeal to the SPB in writing within 30 calendar days of the

department's response to their complaint, or if the department fails to respond within the department's internal time lines.

At any stage of the discrimination complaint process, if there is agreement between the complainant and their department, mediation may be used for seeking resolution of the complaint.

### **THE STATE PERSONNEL BOARD'S APPEALS PROCESS**

Appeals of discrimination complaints accepted by the SPB are scheduled for hearings by an Administrative Law Judge (ALJ)\*, who submits a proposed decision to the Board for review and final adoption. California Government Code Section 18671.1 provides that a decision shall be rendered within four months of the filing of a formal discrimination complaint appeal with the SPB. Appellants who receive an unsatisfactory decision may petition for rehearing within 30 days of receipt of the decision, on the basis of new and/or compelling evidence not considered in the original hearing.

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\* Beginning in July 1999, all discrimination complaint appeals were scheduled for evidentiary hearing. Informal hearings are no longer used for these cases because of the complexity of issues.

## **STATE PERSONNEL BOARD**

### **RECOMMENDATIONS FROM THE REPORT ON THE STATUS OF THE STATE DISCRIMINATION COMPLAINT PROCESS - FEBRUARY 2002**

1. The SPB to develop a regulation requiring departments to issue written non-discrimination policy statements to all their employees when first employed and at least once every three years thereafter.
2. Departments to include definitions of the protected categories in their non-discrimination policy statements.
3. The SPB to issue a reminder to departments of their legal obligation to display prominently the DFEH non-discrimination poster and to call employees' attention to it.
4. The SPB to develop and distribute a poster informing state employees about the state discrimination complaint process and an employee's right to appeal to the SPB.
5. The SPB to propose new legislation requiring that each appointing authority appoint an EEO officer who reports directly to the departmental director or chief deputy director and be independent of human resources and line programs.
6. The SPB to propose new legislation to specify that the EEO officer is responsible for managing the departmental discrimination complaint process.
7. The SPB, in cooperation with the California Civil Rights Officers Council (CCROC) and the Department of Personnel Administration, to review EEO officer positions to determine the appropriate classification level.
8. The SPB to promulgate a regulation requiring departments to have at least one trained reasonable accommodation coordinator.
9. Departments to ensure that their reasonable accommodation coordinators receive training on the reasonable accommodation provisions of both the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA).
10. The SPB to form a task force to explore the development of a new comprehensive basic EEO/non-discrimination law training program for state managers and supervisors.
11. The SPB to follow-up with departments in the 13 cases where discrimination was found in order to determine why no action was taken against the responsible party.

## ATTACHMENT 1

12. The SPB to revise its quarterly discrimination complaint data collection process to require departments to explain the reason why no action is taken in cases where discrimination is found.
13. The SPB to promulgate a new regulation requiring departments to have written discrimination complaint procedures.
14. The SPB to develop a model written discrimination complaint procedure identifying essential elements that should be included in an effective procedure.
15. The SPB to review and approve current written departmental discrimination complaint procedures and subsequent revisions.
16. The SPB to promulgate a new regulation requiring departments to provide a copy of their discrimination complaint procedures to all new employees and to reissue the procedures to all employees every three years and to place their procedures on the departmental Web site.
17. The SPB to revise Regulation 54.2 to clarify and strengthen the requirement that departments have an effective informal discrimination complaint process.
18. Departments to provide their employees with information on how to use the informal discrimination complaint process by complying with the new regulations proposed in recommendations #16 and #22.
19. The SPB to develop criteria to assist departments in determining whether they have an adequate number of EEO counselors.
20. The SPB to develop a regulation requiring that all EEO counselors be trained before being assigned counseling duties, and that they undergo refresher training every three years.
21. The SPB to revise its EEO counselor training to provide greater emphasis on practical counseling and interviewing techniques.
22. The SPB to develop a regulation requiring departments to prominently post the names and telephone numbers of their EEO counselors, distribute a written list of counselors to all employees, and post the list in a prominent place and/or on the departmental Web site.
23. Departments to provide all their employees with a written description of the functions and services of their EEO office and the names and telephone numbers of the departmental EEO officer and staff.
24. The SPB to develop criteria to assist departments in determining whether they have an adequate number of EEO investigators.

## ATTACHMENT 1

25. The SPB to develop a regulation requiring that all EEO investigators be trained before being assigned investigative duties and that they undergo refresher training every three years.
26. The SPB to revise its technical investigator training class to provide more emphasis on the practical aspects of conducting an investigation, including steps in the investigative process, interviewing techniques, and report writing.
27. The SPB, in cooperation with departmental EEO officers, to explore how small departments can most effectively obtain needed resources to investigate discrimination complaints.
28. The SPB to develop a regulation that sets forth the standards for opening and closing out a discrimination complaint investigation.
29. The SPB to revise its regulations to include a time limit of 180 days for a department to complete a discrimination complaint investigation and issue a decision before an employee can appeal directly to the SPB.
30. SPB to work with departments to develop guidelines on whom may have access to departmental discrimination complainant files during and following investigations of complaints.
31. Departments to organize and maintain their discrimination complaint files in accordance with SPB's EEO investigator training guidelines.
32. The SPB to develop a regulation requiring departments to develop and distribute a policy statement prohibiting retaliation for use in the discrimination complaint process.
33. The SPB to implement recommendation #12 in order to more fully monitor actions/no action taken against those found by departments to have retaliated against another employee.
34. The SPB to review its technical training course on reasonable accommodation to determine how it might be improved. The SPB should consider input from departmental EEO staff and reasonable accommodation coordinators for improving the course.
35. The SPB to promulgate a regulation requiring that departments issue written reasonable accommodation procedures to all their employees.
36. The SPB to require departments to include a provision for the interactive process, including who has responsibility for initiating the process, in their departmental reasonable accommodation procedures.

## ATTACHMENT 1

37. The SPB to revise and reissue to departments its booklet Guide to Implementing Reasonable Accommodation and include information about the requirement for the interactive process.
38. The SPB to revise Regulation 53.2 requiring departments to provide the employee with a final decision on his/her request within 20 days after receiving medical information from the employee's licensed health care practitioner.
39. In implementing the statutory requirement for an interactive process, departments to ensure they keep employees informed about the status of their reasonable accommodation requests.
40. Departments to ensure their written reasonable accommodation procedures include a provision for providing employees their appeal rights.
41. The SPB to revise Regulation 53.2 to require that the EEO officer review all reasonable accommodation requests to ensure all legal requirements have been met before the department's final decision on the request.
42. The SPB and departments to continue to broadly publicize mediation as a means for resolving discrimination complaints and encourage its use.
43. The SPB to promulgate a new regulation requiring departments to track informal discrimination complaints and report them to the SPB on a quarterly basis.
44. The SPB to promulgate a new regulation requiring departments to track formal discrimination complaints and report them to the SPB on a quarterly basis.
45. The SPB to work to complete its automated, interactive, Internet-based discrimination complaint tracking system, and the SPB coordinate this effort with departmental efforts to improve tracking systems.
46. The SPB to provide additional training to departmental staff regarding how to properly report discrimination complaint information to the SPB.
47. Departments to review the adequacy of their resources for completing workload required by the SPB to prevent employment discrimination, provide equal employment opportunity, and to deal effectively with discrimination complaints, and develop any needed budget change proposal to obtain needed resources.
48. The SPB to promulgate a new regulation mandating that departments report both informal and formal discrimination complaints and DFEH and EEOC complaints to the SPB on a quarterly basis.
49. The SPB to change its reporting of discrimination complaint data from a calendar year basis to a fiscal year basis to be consistent with its reporting of other employment data.

## ATTACHMENT 1

50. The SPB to conduct on-site reviews of the discrimination complaint process in a limited number of departments each year and provide feedback on what improvements are needed.
51. Departments to include needed improvements to their discrimination complaint process in their EEO plan and see that they are implemented.
52. The SPB to ensure that discrimination complaint appeals are identified by type of discrimination alleged and enter this information into the automated case tracking system.
53. The SPB to prepare quarterly reports on its decisions in discrimination complaint and reasonable accommodation appeals showing the disposition in order to facilitate monitoring.
54. The SPB to investigate why discrimination complaint and reasonable accommodation appeals, take longer than 180 days to complete and identify ways to reduce time to close cases.
55. The SPB to clarify, by statute or regulation, that statistical and other employment information needed to support a claim of discrimination is public information and that complainants must be granted access to this information when requested. Such information would include, but not be limited to, employment lists, bottom-line reports, and management information system reports.
56. The SPB to develop a statutory requirement that departments track the costs associated with their discrimination complaint activity and report the information to the SPB annually.
57. The SPB to track the costs associated with department discrimination complaint activity.
58. The SPB to include the costs associated with departmental discrimination complaint activity in its annual report to the Legislature.



## **JOINT LABOR/MANAGEMENT COMMITTEE ON DISCRIMINATION**

### **RECOMMENDATIONS FROM THE REPORT TO THE CALIFORNIA STATE PERSONNEL BOARD ON DISCRIMINATION IN STATE CIVIL SERVICE – DECEMBER 2000**

**Recommendation #1** - The SPB should establish a standard list of recommended departmental non-discrimination policies to establish uniformity among departments. The list should include such topics as, but not limited to:

- Age (Over 40)
- Ancestry
- Color
- Disability (Mental, Physical, HIV & Aids)
- Marital Status
- Medical Condition
- National Origin
- Non-Discrimination in Employment Practices
- Pre-employment Inquiries
- Pregnancy Discrimination
- Denial of Pregnancy Disability Leave
- Denial of Family & Medical Care Leave
- Race
- Religion
- Retaliation
- Sex
- Sexual Harassment

**Recommendation #2** – The SPB should aim to monitor departments to ensure that they develop and implement a discrimination prevention program.

**Recommendation #3** - The SPB should revise and reissue the February 25, 1991 (current policy), SPB policy memo on the Role of the Equal Employment Opportunity/Affirmative Action Officer to require that non-discrimination policies are signed by the departmental director.

**Recommendation #4** - The SPB should review all departmental discrimination complaint procedures, pursuant to SPB Rule 547.1, to ensure that those procedures provide adequate instructions for informal discrimination complaints.

**Recommendation #5** - The SPB should establish new regulations to set departmental guidelines for writing informal discrimination complaint procedures.

**Recommendation #6** – The SPB should aim to ensure that departments develop written procedures to provide reasonable accommodation under the Americans with Disabilities Act of 1990 and new FEHA considerations.

## ATTACHMENT 2

**Recommendation #7** – The SPB should monitor adverse actions disproportionate impact based on protected group status and investigate patterns of disproportionate impact.

**Recommendation #8** – The SPB should initiate corrective actions after findings are made on investigative patterns of disproportionate impact against protected groups in adverse actions.

**Recommendation #9** – The SPB should implement the 1994 Adverse Action Task Force recommendations.

**Recommendation #10** - The SPB should budget, hire and assign sufficient staff to implement the recommendations.

**Recommendation #11** - The SPB and DPA should implement monitoring systems to evaluate the effectiveness of departmental actions, e.g. audits, annual reports, surveys, etc., consistent with recommendations from the 1994 Adverse Actions Task Force Report.

**Recommendation #12** – The SPB should report annually on the status of the impact of adverse actions on various groups and where the report shows disproportionate impact, SPB should create a remedy to address the impact, e.g., by oversight and progressive sanctions.

**Recommendation #13** - The SPB and DPA should incorporate training/audit programs into departments to assure that problems reported regarding adverse actions will be addressed appropriately.

**Recommendation #14** - SPB should create criteria for selection of departments requiring continued monitoring and should annually evaluate whether departments meet the prescribed criteria.

**Recommendation #15** – SPB should collect and analyze adverse action data by age.

**Recommendation #16** – SPB should collect and analyze data on age, race, ethnicity, disability and gender.

**Recommendation #17** – SPB should clearly define “adverse action” for data collection purposes to include such actions as rejections during probation, AWOL, resignations, medical terminations and disability retirements based on analyses of disproportionate impact.

**Recommendation # 18** – SPB should collect and analyze adverse action data by type of action and issue periodic reports.

## ATTACHMENT 2

**Recommendation #19** – The SPB should establish written procedures for departments identified in the *1994 Adverse Action Task Force Report* to monitor their adverse actions for adverse impact. These procedures should direct departments to prepare and submit an annual report to the SPB regarding their monitoring activities of adverse actions.

**Recommendation #20** - To accurately reflect and account for the number and type of formal discrimination complaints in state civil service, the SPB should report all formal discrimination complaints filed against state agencies and departments. This reporting should include complaints filed with DFEH and EEOC.

**Recommendation #21** – The SPB should propose a new regulation for the quarterly reporting of all formal discrimination complaint activity by state agencies and departments, including discrimination complaints filed against state departments, boards and commissions at the DFEH and EEOC.

**Recommendation #22** – The SPB should institute prior task force recommendation #3 of the *1994 Adverse Action Task Force Report*, page 14, to provide for SPB technical assistance to departments. SPB needs to reemphasize the importance of discrimination complaint reporting in adverse actions.

**Recommendation #23** – The SPB needs to study retaliation in state government to assess how well individual departments implement G.C. Section 19702(a) in their discrimination complaint process.

**Recommendation #24** – The SPB should propose a new regulation to make a finding of intentional retaliation in a departmental discrimination complaint investigation a basis for adverse action, a 30-day suspension minimum, under G.C. Section 19572(w).

**Recommendation #25** – The SPB should establish regulations to establish criteria for state agencies, departments, boards and commissions who close a discrimination complaint investigation with a finding of discrimination and no corrective action. Such regulations should include criteria for (a) notification of no corrective action under G.C. Section 19572 (w), and (b) notification of right to request-to-file charges under G.C. Section 19583.5 (a).

**Recommendation #26** - The SPB staff should revise the Departmental Discrimination Complaint Log Sheet (3/19/99) to add an explanation field for why corrective action was not elected.

**Recommendation #27** - The SPB should establish regulations for state agencies, departments, boards and commissions to close discrimination complaint investigations within a given time limit. Such regulations should include (a) 180-day time limit on responses to a discrimination complaint filed with the department under G. C. Section 19702 (g) and, (b) automatic right to appeal to the SPB [under Rule 51.2] after the 180-day time limit has expired.

## ATTACHMENT 2

**Recommendation #28** – Those departments that exceed 180 days on average, or in the majority of cases filed, to close a formal discrimination complaint should be audited by the SPB's Quality Assurance Unit.

**Recommendation #29** – SPB needs to reassess if 30 days is sufficient time for state employees to file discrimination complaint appeals going to evidentiary hearing.

**Recommendation #30** – SPB needs to define jurisdiction, grounds for appeal and 30 day time limits in written appeals information.

**Recommendation #31** - SPB needs to report on their own time frames to respond to discrimination complaint appeals, and discrimination complaints that continue beyond the state's discrimination complaint process.

**Recommendation #32** – The SPB should establish procedures for state agencies, departments, boards and commissions to monitor hiring practices to assure non-discrimination. Such procedures should include criteria for the identification and elimination of employment barriers.

**Recommendation #33** - The SPB should conduct public hearings to assess the effectiveness, accessibility and fairness of the state's discrimination complaint process, including the resolution of informal discrimination complaints, as required by G. C. Section 19702.5 (c).

**Recommendation #34** - The SPB should establish regulations to provide guidelines for state agencies, departments, boards and commissions to gather and maintain data on informal discrimination complaint activity under the authority of G. C. Section 19702.5 (c).

**Recommendation #35 – Note:** Recommendations 34 and 35 are identical in the report. Consequently, item 34 is listed and item 35 is not listed. This brings the total item count to 51 rather than 52.

**Recommendation #36** - The SPB should establish regulations to provide guidelines for state agencies, departments, boards and commissions to establish a uniform informal discrimination complaint procedure to ensure consistency, fairness and confidentiality under the authority of G. C. Section 19702.5 (c).

**Recommendation #37** - The SPB should establish regulations to provide guidelines for state agencies, departments, boards and commissions to establish uniform guidelines for equal employment opportunity counselors.

**Recommendation #38** – Under G.C. Section 19702.5(c), the State Personnel Board needs to assess the “effectiveness, accessibility and fairness” of allowing state departments to close 1/5 of discrimination complaints filed based on “allegations not based on protected group status.”

## ATTACHMENT 2

**Recommendation #39** – The State Personnel Board should audit the 52 cases closed on the basis of “allegations not based on protected group status,” identified in Table 4 of the 1999 *Formal Discrimination Complaint Activity in State Civil Service* report to the Legislature. The purpose of this audit would be to assure these employees were informed of their right to appeal the departmental decision under State Personnel Board Rule 54.

**Recommendation #40** – Under the retaliation prohibitions of G.C. Section 19702(a), the SPB should not allow state departments to close discrimination complaint investigations based on “adverse action initiated against complainant.”

**Recommendation #41** – The SPB should audit the 13 cases and all new cases that have been closed on the basis of “adverse action initiated against complainant” (identified in Table 3 of the 1999 *Formal Discrimination Complaint Activity in State Civil Service* report to the Legislature). The purpose of this audit would be to ensure the action is not retaliation. Further, the SPB should review these closures to ensure these employees were informed of their right to appeal the department decision to terminate the process under SPB Rule 54, and the departmental decision to terminate the process was consistent with SPB Rule 54.2(b).

**Recommendation #42** – The SPB should require departments to indicate with the Notice of Adverse Action document filed with SPB, if the employee has filed a discrimination complaint.

**Recommendation #43** – The SPB should require that no adverse actions result in discrimination. If any portion of the adverse action is found to be based on discrimination, SPB should require that portion be deleted from the action.

**Recommendation #44** - The SPB should recommend that administrative hearing appeal procedures for adverse actions be revised to require an administrative law judge to rule on allegations of discrimination the appellant raises as an affirmative defense.

**Recommendation #45** - The SPB should require those discrimination complaints filed under SPB Rule 54.2 be resolved prior to final adjudication of appeals from rejection during probation and adverse actions filed under G.C. 19175 and 19575, respectively, where that discrimination may be asserted as a defense in the appeal.

**Recommendation #46** - The SPB should require appeals hearings in rejection during probation appeals where the appellant has filed a discrimination complaint.

**Recommendation #47** – Within one year of this report, the SPB schedule a public hearing to gather testimony from the four departments identified in (1) above to examine the reasons why they received discrimination complaints at three times the statewide rate.

## ATTACHMENT 2

**Recommendation #48** -Within one year of this report, the SPB schedule five departments identified in (2) above for a quality assurance audit of their discrimination complaint program to examine the reasons why they received discrimination complaints at two times the statewide rate.

**Recommendation #49** -Within one year of this report, the SPB require the four departments identified in (3) above to complete a self-evaluation of their discrimination complaint program to examine the reasons why they received discrimination complaints at a rate in the top five of their major group.

**Recommendation #50** - The SPB, by new regulation, should establish a step in the statewide discrimination complaint procedure, special for small departments with less than 500 employees, to spell out special circumstances where discrimination complaints shall be handled by the SPB.

**Recommendation #51** – The SPB staff should analyze its statutory mandates related to discrimination and report to the five-member State Personnel Board on those that are not being implemented. The SPB's budget history in relation to those program areas that affect the elimination of discrimination should be analyzed and reported to the SPB within 12 months of this report. The SPB should then identify the resources needed to implement an adequate program.

**Recommendation #52** – The SPB should involve state employee organizations in evaluating and developing the mediation program.